IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WA.No. 1681 of 2006(D)

AGAINST THE JUDGEMENT IN OP.26805/2000 Dated 08/03/2006
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APPELLANT: PETITIONER

PHOSPHOROUS & CHEMICALS TRAVANCORE LTD., 39/4206, IST FLOOR, OLD THEVARA ROAD, ERNAKULAM-682 016, REPRESENTED BY ITS DIRECTOR SRI.P.K.KRISHNAMURTHY.

BY ADV. SRI.P.N.RAVINDRAN
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.JAYKAR.K.S.

RESPONDENTS/RESPONDENTS
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1. KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVANAM, THIRUVANANTHAPURAM-4, REPRESENTED BY ITS CHAIRMAN.

2. THE SPECIAL OFFICER (REVENUE), KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVANAM.

3. THE CHIEF ENGINEER, TRANSMISSION (SOUTH), K.S.E.BOARD, VYDYUTHI BHAVANAM, THIRUVANANTHAPURAM-4.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K. BALI, C.J. & S.SIRI JAGAN, J.

W.A.No.1681 of 2006

Dated, this the 5th day of December, 2006

JUDGMENT

V.K.Bali,C.J.(Oral)

In the context of the averments made in paragraph 3 of the writ petition pertaining to the major break down of plant/machinery as a reason beyond the control of the petitioner and applicability of clause 16 of the agreement Ext.P1 in that event, counsel contends that the same was not properly pressed before the learned Single Judge. He says that this question would go to the root of the case and may be considered by this Court.

2. we are of the firm view that an appeal can lie on points which have been pressed and lost, but not on points which have not been pressed at all. In such an event, even though appeal may not be competent it is eminently a case for seeking review. Confronted with this position, learned counsel says that this appeal may be dismissed as withdrawn with liberty to the appellant to move an application for review. With leave and

liberty as asked for this writ appeal is dismissed as withdrawn. At this stage learned counsel states that the time for filing review application might have been over by now and the same if now filed would be barred by time. Learned counsel for the respondents states that if the review application is filed within seven days from today no objection with regard to limitation would be raised.

V.K. BALI,
CHIEF JUSTICE.

S.SIRI JAGAN,
JUDGE.

vns

V.K. BALI, C.J. & P.R.RAMAN, J.

I.A.No.987 of 2006 in
W.A. No.1681 of 2006

Dated, this the 10th day of October, 2006

ORDER

V.K.Bali,C.J.

No one appears on behalf of the respondents despite service. I.A. is allowed in terms of the prayer made in the application. Issue notice to the respondents in the I.A.

V.K. BALI,
CHIEF JUSTICE.

P.R.RAMAN,
JUDGE.

vns